



**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. Appeal No. 264 of 2015**

**Reserved on: 02.03.2026**

**Date of Decision: 24.03.2026**

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Surender Pal Sharma

...Appellant

Versus

Virender Kumar

...Respondent

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*Coram*

*Hon'ble Mr Justice Rakesh Kainthla, Judge.*

*Whether approved for reporting?<sup>1</sup> No*

For the Appellant : Mr G.R. Palsra, Advocate.

For the Respondent : Mr Sanjeev Kuthiala, Sr. Advocate  
with Ms Tamana, Advocate.

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**Rakesh Kainthla, Judge**

The present appeal is directed against the judgment dated 21.05.2015 passed by learned Additional Chief Judicial Magistrate, Court No. 1, Mandi, H.P. (learned Trial Court) vide which the respondent (accused before the learned Trial Court) was acquitted of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). (*Parties*

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1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.



*shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present appeal are that the complainant filed a complaint before the learned Trial Court for the commission of an offence punishable under Section 138 of the NI Act. It was asserted that the accused is son-in-law of the complainant and is working as an agent in the Life Insurance Corporation of India. The accused approached the complainant for providing financial help, and the complainant advanced ₹4,00,000/- to him from time to time. The accused issued a post-dated cheque of ₹4,00,000/-, dated 08.03.2013, drawn on Indian Overseas Bank, Mandi to discharge his liability. The complainant presented the cheque to his bank, and it was sent to the bank of the accused. However, the bank of the accused dishonoured the cheque with an endorsement 'insufficient funds'. The complainant served a legal notice upon the accused asking him to repay the amount. The accused, instead of paying the amount, sent a reply to the notice. Hence, a complaint was filed before the learned Trial Court for taking action as per the law.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, a Notice of



Accusation was put to him for the commission of an offence punishable under Section 138 of the NI Act, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined Gurdas Rai (CW1) and himself (CW2), and Rakesh Kumar (CW3) to prove his complaint.

5. The accused, in his statement recorded under Section 313 of Cr.P.C., denied the complainant's case. He stated that he had issued blank cheques in favour of his wife, which were misused by the complainant. He examined Vivansh Rai (DW1) and himself (DW2).

6. Learned Trial Court held that the defence taken by the accused that he had issued blank cheques to his wife for household expenses was highly probable. The wife of the accused used to reside with the complainant. She committed suicide. A Criminal case was also registered against the accused. The complainant obtained the cheques and misused them. This was corroborated by the fact that death had taken place in January 2013 and the cheque pertained to March, 2013. It was highly unlikely that the accused would have issued a cheque after the registration of the criminal case against him. The defence taken by the accused was probable. Hence, the learned Trial Court acquitted the accused.



7. Being aggrieved by the judgment passed by the learned Trial Court, the complainant has filed the present appeal asserting that the learned Trial Court had erred in acquitting the accused. The accused admitted his signature on the cheque, and a presumption arose that the cheque was issued for consideration for discharging the debt/liability. Learned Trial Court did not consider the presumption. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

8. I have heard Mr G.R. Palsra, learned counsel for the appellant/complainant and Mr Sanjeev Kuthiala, learned Senior Counsel, assisted by Ms Tamana, learned counsel for the respondent/accused.

9. Mr G.R. Palsra, learned counsel for the appellant/complainant, submitted that the learned Trial Court erred in acquitting the accused. The accused admitted his signature on the cheque, and a presumption arose that the cheque was issued for consideration to discharge the debt/liability. The learned Trial Court failed to consider this presumption. The statements of defence witnesses were not probable. Therefore, he



prayed that the present appeal be allowed and the judgment passed by the learned Trial Court be set aside.

10. Mr Sanjeev Kuthiala, learned Senior counsel for the respondent/accused, submitted that the learned Trial Court had rightly held that the accused used to keep the blank signed cheques with his wife to meet household expenses. The wife of the accused was residing in her parental home. She committed suicide, and the complainant obtained possession of the cheques. This was a reasonable view that could have been taken based on the evidence produced on the record, and this Court should not interfere with the reasonable view of the learned Trial Court, even if another view is possible. Hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The present appeal has been filed against a judgment of acquittal. It was laid down by the Hon'ble Supreme Court in *Surendra Singh v. State of Uttarakhand*, 2025 SCC OnLine SC 176: (2025) 5 SCC 433 that the Court can interfere with a judgment of acquittal if it is patently perverse, is based on misreading/omission to consider the material evidence and



reached at a conclusion which no reasonable person could have reached. It was observed on page 440:

“12. It could thus be seen that it is a settled legal position that the interference with the finding of acquittal recorded by the learned trial judge would be warranted by the High Court only if the judgment of acquittal suffers from patent perversity; that the same is based on a misreading/omission to consider material evidence on record; and that no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.”

13. This position was reiterated in *P. Somaraju v. State of A.P.*, 2025 SCC OnLine SC 2291, wherein it was observed:

“ 12. To summarise, an Appellate Court undoubtedly has full power to review and reappraise evidence in an appeal against acquittal under Sections 378 and 386 of the Criminal Procedure Code, 1973. However, due to the reinforced or ‘double’ presumption of innocence after acquittal, interference must be limited. If two reasonable views are possible on the basis of the record, the acquittal should not be disturbed. Judicial intervention is only warranted where the Trial Court's view is perverse, based on misreading or ignoring material evidence, or results in a manifest miscarriage of justice. Moreover, the Appellate Court must address the reasons given by the Trial Court for acquittal before reversing it and assigning its own. A catena of the recent judgments of this Court has more firmly entrenched this position, including, *inter alia*, *Mallappa v. State of Karnataka 2024 INSC 104*, *Ballu @ Balram @ Balmukund v. The State of Madhya Pradesh 2024 INSC 258*, *Babu Sahebagouda Rudragoudar v. State*



*of Karnataka 2024 INSC 320, and Constable 907 Surendra Singh v. State of Uttarakhand 2025 INSC 114.”*

14. The present appeal has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

15. The complainant, Surender Pal Sharma (CW2), admitted that the accused is his son-in-law and that he used to reside at Chandigarh. He also admitted that the wife and children of the accused were residing at Mandi. He admitted that the wife of the accused came to her parental home on 06.12.2012 with her son. He admitted that the wife of the accused committed suicide in her parental home on 28.01.2013. He volunteered to say that the accused used to ask his wife to bring money from the complainant. He denied that the accused had kept blank signed cheques with his wife to meet the household expenses. He had paid ₹1,30,000/- to the accused in November and December. ₹1,40,000/- and ₹1,30,000/- in January, 2013. This money was paid in the presence of Biri Singh and Munish Kaushal. He did not remember whether the cheque was issued in the year 2012 or 2013. He admitted that the FIR was registered against the accused regarding the suicide.

16. The complainant admitted the defence version that the accused was residing at Chandigarh and his wife was residing with her parents, where she had committed suicide. He also admitted



that a criminal case was registered against the accused. He claimed that the payment was made in November, December 2012 and January, 2013 and he did not remember whether the cheque was issued in the year 2012 or 2013. Since the payment was made in January, 2013; therefore the cheque could not have been issued before that. The wife of the accused had committed suicide in January 2013, and a criminal case was registered thereafter against the accused. Therefore, it was highly unlikely that the accused would have issued a cheque of ₹4,00,000/- in favour of the complainant after the registration of the case against him at the instance of the complainant.

17. Vivansh Rai (DW1) is the son of the accused. He stated that the accused used to hand over blank signed cheques to his (vivansh's) mother to meet the household expenses. He admitted in his cross-examination that his father used to meet all the expenses. He denied that the complainant used to pay money at the behest of the accused. He denied that any blank cheques were handed over by the accused to the complainant.

18. He is the son of the accused, who was present with his mother at the time of her death. He is the best person to depose about the means of payment to his mother. Therefore, his

testimony that the accused had handed over the blank signed cheques to his wife was rightly accepted as correct by the learned Trial Court.

19. Accused Virender Kumar (DW2) stated that he was serving at Chandigarh. He used to hand over the blank signed cheques to his wife to meet household expenses. He had left his wife in her parental home. She committed suicide on 27.01.2013. A case was registered against him for the commission of an offence punishable under Section 306 of the IPC. A case was also filed against him for the child custody. He had not handed over any cheque to the complainant, and the complainant had misused the blank signed cheques given to his daughter. He stated in his cross-examination that he used to work as an insurance agent. He denied that the complainant had provided financial help to him before the death of his wife. He denied that he had taken the money to repay the persons whose amount was misappropriated by him.

20. There is no reason to disbelieve the testimony of the accused. The defence version is highly probable that the accused had handed over blank signed cheques to his wife to meet household expenses. It is admitted that the accused and his wife



were residing separately, and there is no evidence as to how the wife of the accused was meeting her expenses. The complainant has not even stated that he was providing money to her or that she was employed. Therefore, the learned Trial Court was justified in accepting the version of the accused that he had handed over the blank signed cheques to his wife, which were misused by the complainant. This was a reasonable view that could have been taken based on the material placed before the learned Trial Court, and no interference is required with it while deciding an appeal against acquittal.

21. In view of the above, the present appeal fails, and it is dismissed. Pending applications, if any, also stand disposed of

22. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the respondent/accused is directed to furnish bail bonds in the sum of ₹25,000/- with one surety in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the respondent/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.



23. A copy of the judgment, along with records of the learned Trial Court, be sent back forthwith.

(Rakesh Kainthla)  
Judge

24<sup>th</sup> March, 2026  
(Nikita)